

GSA ORDER

SUBJECT: Implementation of the Public Buildings Amendments of 1988 (Pub. L. 100-678), Section 6

1. Purpose. This order provides procedures for the implementation of section 6 of Pub. L. 100-678, 40 U.S.C. 619.

2. Cancellation. PBS 3400.14 is canceled.

3. Backmound. Section 6 of Pub. L. 100-678 adds a new section 21 to the Public Buildings Act of 1959 entitled, "Compliance with Nationally Recognized Codes."

4. Explanation of revision. This revision provides for coordination with the General Services Administration (GSA) order, Compliance with Nationally Recognized Building Codes (ADM 3400.1A), and applies to any future changes to ADM 3400.1A that affect the nationally recognized codes determined by the Administrator, GSA.

5. Requirements.

a. Code requirements. Under Section 21, GSA or any other Federal agency must, when constructing or altering a building, be in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes, to the maximum extent feasible as determined by the Administrator.

b. Other requirements. Under Section 21, GSA or any other Federal agency may construct or alter a building only after considering all requirements (other than procedural requirements) of zoning laws and laws relating to landscaping, open space, minimum distance of a building from the property line, maximum height of a building, historic preservation, and esthetic qualities of a building, and other similar laws. Additional requirements in section 21 include special rules regarding State and local government consultation, reviews, inspections, and recommendations; effect of noncompliance; limitation on liability; and national security waiver.

6. Applicability. This order applies to all PBS regional and field offices that administer, manage, or perform planning, repair and alteration, real estate, or design and construction functions, as well as those agencies that perform the functions under GSA's construction authority.

KENNETH R. KIMBROUGH
Commissioner
Public Buildings Service

ATTACHMENT
PROCEDURES FOR IMPLEMENTATION OF
PUBLIC BUILDINGS AMENDMENTS OF 1988
(PUBLIC LAW 100-678), SECTION 6

1. Zoning laws. During the planning process and the development of associated environmental documentation for new Federal construction, alterations, additions, and renovations, PBS will consider all requirements (other than procedural requirements) of local zoning laws and other local laws relating to landscaping, open space, minimum distance of a building from the property line, maximum height of a building, historic preservation, and esthetic qualities of a building, and other similar laws. Regional staff and/or their contract consultants, architect-engineers (A/E's), etc., are to fully address such laws and requirements in their planning and design documents. Any proposed deviations from such laws are to be documented, fully justified, and presented to the Assistant Regional Administrator for Public Buildings Service for approval.

2. Building codes.

a. GSA will maintain its established policy to comply to the maximum extent practicable with local building codes applicable in the jurisdiction.

b. When the Central Office authorizes a region to begin execution of a project, the region will formally request in writing, from appropriate local and/or State officials, a statement of whether they want the opportunity to review the project for any or all of the following:

(1) Zoning compliance;

(2) Building design code compliance; and

(3) Construction inspection for code compliance.

c. The GSA request for this expression of interest shall state that GSA will not pay for the reviews, inspections, or consultations, and though all comments will be duly considered, GSA maintains the right to make the final decision whether to accept recommendations. The request will also include references to the model building codes and standards that GSA has adopted in accordance with Pub. L. 100-678. Additionally, the request should state that the GSA-adopted model building codes and standards will serve as minimum requirements nationwide. GSA's policy regarding local building codes and the requirements of the GSA publication, Facilities Standards for the Public Buildings Service (PBS-PQ100.1), must also be stated in the request.

d. Local officials will be provided 30 days for their review and comment in writing, with no extensions. If no comments have been received by the time the commenting period is over, the region will proceed with project execution. If the local officials elect not to review the concept, this must be duly noted in the project file. The region should request a written negative response.

e. All design and construction work performed on Federal buildings by GSA or under GSA's construction authority will comply with the nationally recognized codes determined by the Administrator, GSA.

f. GSA will make maximum use of equivalency clauses in all the codes and standards to ensure flexibility and effectiveness of actions.

g. If there is a conflict between a code requirement and a GSA requirement based on a Federal law, Executive order, or GSA owner requirement, the GSA requirement will prevail if it is more stringent.

h. All contracts including design of projects must include the requirements in g, above, and the provision

that the contractor develop a working relationship with the local jurisdiction during the design process.

3. State and local government consultation, review. and inspections.

a. Applicability. For purposes of the consultation requirements in section 21(c) of the Public Buildings Act of 1959, as amended, the term "projects" is defined in Section 101-19.100(a)(2) (intergovernmental Consultation on Federal Projects) of the Federal Property Management Regulations. The term projects means prospectus-level construction projects and projects involving a significant change in the use of federally owned property or property to be acquired by exchange in connection with a public building project.

b. Zoning and other laws relating to urban design issues. Regional staff and/or their contractors, A/E's, etc., will consult with appropriate officials of the State and/or political subdivision where the project will be constructed. This includes all relevant procedural requirements of the National Environmental Policy Act of 1969, and all amendments, and the National Historic Preservation Act of 1966, and all amendments. If the local and/or State jurisdiction elects to review the design concept for zoning compliance, the region will formally provide the final concept to such agencies concurrently with GSA internal review before the region's approval of the final concept. Local officials will be provided 30 days for their review and comment in writing, with no extensions. If comments have not been received by the time the commenting period is over, the region will proceed with project execution. If the local officials elect not to review the concept, this must be duly noted in the project file.

c. Design review for code compliance. As described in b, above, those jurisdictions electing to review building designs for code compliance will be given the opportunity to do so. Initially, final concepts or preliminary designs will be formally provided to such officials, to be followed by the final construction documents. The officials will have 30 days, with no extensions, to comment in writing on proposed designs at those two milestones. If the design is "staged" or fast tracked, review schedules will be coordinated with the local government as appropriate.

d. Construction inspection. If a jurisdiction elects to perform code compliance construction inspection, the following procedures must be followed:

(1) The construction contract must include the requirement for the contractor to coordinate with the local jurisdiction for construction inspection in accordance with the national model building code used, the GSA publication, Facilities Standards for the Public Buildings Service (PBS-PQ100.1), and the jurisdictions' customary schedule of inspections.

(2) The construction contractor will provide a copy of the approved construction schedule to the jurisdictions and any revisions to the schedule so that the jurisdiction can perform its inspections efficiently and with reasonable notice for both parties. The local jurisdiction shall be requested to notify the GSA Contracting Officer's Representative (COR) of its planned inspection so GSA can attempt to coordinate its site visits.

(3) Any findings resulting from such inspections by the local jurisdiction shall immediately be communicated to GSA's COR for consideration. It is to be clearly understood by all parties (jurisdiction, construction contractor, and GSA) that the local jurisdiction does not have the authority to reject, accept, or make changes to the work and is there to assist GSA in achieving code compliance.

4. Model codes, local review., and local recommendations.

a. The region should make a maximum effort to incorporate local and/or State recommendations when

reasonable and when in the best interests of the Government of the United States. Again, it is GSA's policy to comply with local building codes to the maximum extent practicable. The region should maintain a record of all local and/or State officials' written comments made during the duration of the project in the official project files.

b. Comments provided by State and local jurisdictions (other than those provided under laws such as the National Environmental Policy Act) are recommendations and shall be given due consideration. The officials do have the right to make such recommendations directly to the Administrator, GSA, especially in cases of controversy or nonagreement with the GSA regional office.

5. Code information and training The Office of Real Property Development will continue to provide regions with up-to-date information on code issues. Regions should take action to become members of the designated code bodies to ensure that they will receive updated code materials on a regular basis and to participate, where practicable, in the code review and development process. The Office of Real Property Development will ensure that GSA directives that prescribe technical design and construction code requirements reference the designated codes.